IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Revision No.391 of 2000.
Date of decision:15.05.2007.

Smt.Luxmi Devi ….**Petitioner**

Versus

Ishwar Dev Kanwar ……**Respondent.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr.Ramakant Sharma, Advocate.**

For the Respondent: **None.**

Dev Darshan Sud, J. (Oral).

This revision petition has been instituted by the landlord against the judgments of the learned Rent Controller and the Appellate Authority, whereby the petition for eviction filed by the petitioner-landlord against the respondent-tenant was dismissed by both the courts.

Ground taken for dismissal of the petition and appeal was that the appellant has not succeeded in establishing her title as landlord of the premises in dispute.

Learned counsel appearing for the petitioner has drawn my attention to an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure which

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

was moved before the learned Appellate Authority seeking to lead additional evidence by placing on record certified copy of sale deed No.602, dated 20.9.1986, duly registered, transferring the premises in the name of the petitioner, death certificates of Shri Paras Ram (original owner of the premises) and Devku, daughter of Paras Ram in order to establish that the petitioner was the registered owner of the property and to show prima facie that even in determining the question of title by contest, it could be established on the record that the petitioner was owner of the demised premises. This application was filed in the year 1998. Instead of considering the application, learned Appellate Authority has proceeded to reject it on the ground that since the main appeal has been dismissed, this application has become infructuous.

I have heard learned counsel for the petitioner.

Notices were issued to the respondent who did not respond to the service. Actual date notices were also sent but nobody has put in appearance on his behalf. Learned counsel for the petitioner submitted that even though, strictly the provisions of Order 41 Rule 27 may not be applicable to rent proceedings yet principles contained therein are to be followed. He submits that in case the evidence, as prayed for by him, had been taken on the record, the fate of the appeal would have been different.

I find merit in the submissions made by the learned counsel for the petitioner. The Appellate Authority has not followed the correct procedure in law.

It was incumbent on the learned Appellate Authority to have considered the application at the time of hearing of the appeal. Surely, if one of the grounds for the dismissal of the appeal was that the petitioner is not owner of the premises, the sale deed which the petitioner sought to prove would have clinched the matter. Instead, the Appellate Authority ignored the application and dismissed the appeal. This was neither proper nor in accordance with law. Under the circumstances, this revision petition is accepted. The decision of the learned Appellate Authority is set aside. The matter is remanded to the learned Appellate Authority with a direction that the application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure be decided and the parties be given an opportunity to be heard afresh. Needless to say that in case the application is allowed by the learned Appellate Authority, the respondent will be given an opportunity to lead evidence in rebuttal, if any. This revision petition is disposed of. The learned Appellate Authority will issue notice to the respondent to be present on a particular date to be fixed by it.

The petitioner will appear before the learned Appellate Authority on ***2nd August, 2007***. The records be sent back immediately.

May 15, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**